IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

TRC.No. 391 of 2002

TA.425/2000 OF KERALA SALES TAX APPELLATE TRIBUNAL,
ADDL.BENCH II, ERNAKULAM
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REVISION PETITIONER/RESPONDENT/RESPONDENT/REVENUE

STATE OF KERALA, REPRESENTED BY DEPUTY
COMMISSIONER (LAW) COMMERCIAL TAXES,
ERNAKULAM.

BY SPECIAL GOVERNMENT PLEADER (TAXES) MR.V.V.ASOKAN

RESPONDENT/APPELLANT/APPELLANT/ASSESSEE

MATHEW JOSEPH, PALM FIBRE & YARNS
TRADING CO., KALVETTY, COCHIN - 1.

BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.
SRI.P.BALACHANDRAN
SMT.PREETHA S.NAIR

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 25/06/2007, ALONG WITH TRC NO. 352 OF 2002 & CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

T.R.C.Nos.352, 391, 427 & 432 of 2002 and 87 of 2003

Dated, this the 25th day of June, 2007

ORDER

H.L. DATTU, CJ.

The assessment years in question in these revision petitions are 1993-94, 1994-95 and 1995-96. The revenue, aggrieved by the orders passed by the Sales Tax Appellate Tribunal, Ernakulam, in T.A.Nos.424, 425, 426, 665 and 666 of 2000 dated 28.10.2000, are before us in these revision cases.

2. The respondent is a dealer registered both under the Kerala General Sales Tax Act (KGST Act for short) and the Central Sales Tax Act (CST Act for short). They are doing business in coir products. The assessee has entered into an agency agreement with M/s. Palm Fibre Gover Horowitz (P) Ltd., Kochi. It is that concern which had exported the goods supplied by the assessee.

3. In the returns filed for the aforesaid assessment years, the assessee had claimed exemption under section 5(3) of the CST Act. However, at the time of hearing of these revision petitions, the learned senior counsel Sri Balachandran would submit that the assessee had claimed exemption both under section 5(1) and under section 5(3) of the CST Act. But that submission of the learned senior counsel cannot be accepted by us for the reason that the Tribunal has granted relief to the assessee only on the ground that the transaction would fall under section 5(3) of the CST Act.

4. Then assessee had filed its returns before the assessing authority for the aforesaid assessment years and had claimed exemption under section 5(3) of

the CST Act. The assessing authority had rejected the said claim and, while doing so, the assessing authority had observed that it is mandatory on the part of the assessee to have filed Form No.18A as required under Rule 28A of the KGST Rules, 1963 and since the assessee had failed to produce those documents, the assessee is not entitled to exemption.

5. The correctness or otherwise of the said orders of assessment for the aforesaid assessment years had been questioned by the assessee before the first appellate authority. Before the first appellate authority the assessee's main case was that there was no sale transaction between the assessee with M/s. Palm Fibre Gover Horowitz (P) Ltd.. Even then the assessee had requested the first appellate authority to permit him to produce Form No.18A as required under Rule 28A of the Rules. The request of the assessee was rejected by the Tribunal by observing:

> "(9) Form 18A:
>
> With regard to their contention that they may be permitted to file declaration under Rule 28A against their claim of exemption under sec.5(3) of the CST Act, this contention cannot be accepted since the appellant's claim is that there were no sale by the appellant to M/s. Palm Fibre Gover Horowitz (P) Ltd. This contention is rejected.
>
> The appeals stand disposed of as above."

6. Aggrieved by these orders, the assessee was before the Tribunal. The Tribunal has granted reliefs to the assessee by relying upon the observations made by the Madras High Court and also various other High Courts. In conclusion the Tribunal has observed as under:

> "By applying these dictums laid down by the High Court in the above case, we are of the view that even though the exports were actually done by M/s.Palm Fibre Gover Horowitz (P) Ltd. In view of the stipulations contained in the agency agreement, the appellant is entitled to get the exemption under section 5(3) of the Act as claimed by the appellant." (emphasis supplied by us)

7. The Revenue, being aggrieved by the aforesaid order passed by the Tribunal, is before us in these tax revision cases. They have framed the following questions of law for our consideration and decision. They are as under:

> "a) Is not the Tribunal in error in holding that the assessee is eligible for exemption under Section 5(3) of the Act even though the exports were actually made by a 3rd party?
>
> b) In the facts and circumstances of the case, is not the Tribunal in error in not considering the fact that the assessee had not produced Form 18A declarations to substantiate his claim for exemption as export sales?"

8. At the time of hearing of these revision petitions Sri Ashokan, learned Special Government Pleader (Taxes), would submit that he would not press for an answer for the first question of law framed by the revenue. In view of the submission made by the learned counsel, the first question of law raised in these revision cases need not be considered and answered by us.

9. In order to answer the second question of law framed by the revenue, Rule 28A of the KGST Rules, 1963 requires to be extracted. The same reads as under:

"**28A. Declaration in respect of sales deemed to be in the course of export under section 5(3) of the Central Sales Tax Act, 1956.-** (1) A dealer who purchases goods from another dealer in circumstances in which the sale to him is to be deemed to be in the course of export under sub-section (3) of Section 5 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), shall obtain from the assessing authority a blank declaration form in Form 18A, on payment of a fee of sixty rupees per book of 50 forms and shall furnish to the selling dealer the original and duplicate portions of the declaration in Form 18A duly filled in and signed by him or by responsible person authorised by him in this behalf and shall retain the counterfoil.

xx xx xx xx "

Whether production of declaration Form 18A prescribed under section 28A of the Act is mandatory for claiming exemption under section 5(3) of the CST Act came up for consideration before a Division Bench of this Court in ***M/s. GTN Textiles Ltd. v. State of Kerala (TRC No.290/2002 dated 15th November 2002).***

10. The learned Judges of this court, after detailed consideration of the issue involved, were pleased to observe as under:

> "5. From the aforesaid provisions, it would appear that the requirement is that, if a person wants to claim the benefit of exemption under the provisions of Section 5(3) of the C.S.T.Act, he must be a registered dealer under the Act. The blank declaration Form 18A, to be filled up and given to the selling dealer, has to be obtained by the purchasing dealer from the assessing authority. The various forms prescribed under the Act and the Rules can be obtained only by a registered dealer. From the expression `shall' used in the Rules, it would further appear that the requirement of furnishing the declaration in form 18A is also mandatory for getting the exemption under Section 5

(3) of the Act."

11. A perusal of Rule 28A of the Rules and also the observations made by this court in ***M/s. GTN Textiles Ltd.'***s case (supra) would indicate that the production of declaration Form 18A prescribed under Rule 18A of the Rules is mandatory in order to claim exemption under sub-section (3) of section 5 of the CST Act.

12. In the instant case, though the assessee claimed exemption under section 5(3) of the Act, he failed to produce declaration Form No.18A before the assessing authority. The assessing authority, while completing the assessment, had noticed the aforesaid defect. Therefore, it refused to grant exemption to the assessee.

13. Before the first appellate authority the contention of the assessee was that there was neither purchase nor sale by the assessee to M/s. Palm Fibre Gover Horowitz (P) Ltd.. According to them it is a pure agency agreement. Therefore, though a request was made by the assessee that they may be given time to produce the form, the same came to be rejected by the appellate authority.

14. Before the Tribunal the assessee succeeds, but the Tribunal, after detailed consideration of the case of the assessee, has come to the conclusion that the transaction of sale was in the course of export and, therefore, the provisions of section 5(3) is attracted and the assessee is entitled for exemption under the aforesaid provision. The Tribunal specifically observes in its order that the assessee had made a claim before the assessing authority as well as before

the Tribunal and it is entitled to get exemption under section 5(3) of the CST Act alone.

15. In the instant case, as we have already noticed, the assessee had not produced declaration Form 18A of the Act as mandatorily required under Rule 28A of the Rules. In the absence of such declaration form, in our opinion, the assessisng authority was justified in rejecting the claim of the assessee. This aspect of the matter, though was argued before the Tribunal, the Tribunal without considering the same has proceeded to grant relief to the assessee. Since we have already observed in our order that the production of declaration form under section 18A is mandatory, the Tribunal was not justified in granting the relief to the assessee. In that view of the matter the second question of law framed by the revenue requires to be answered in favour of the revenue and against the assessee. Accordingly the following:

Order

i) The tax revision cases are disposed of.

ii) The first question of law is left unanswered.

Iii) The second question of law is answered in favour of the revenue and against the assessee.

iv) The order passed by the Tribunal in T.A.Nos.424, 425, 426, 665 and 666 of 2000 dated 28.10.2000 are set aside.

v) The order passed by the assessing authority for the aforesaid assessment years is restored.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

mt/

H.L.DATTU, C.J. &
K.T.SANKARAN, J.

T.R.C.352, 391, 427 & 432
of 2002 and 87 of 2003

ORDER

25.6.2007